

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

----In the Matter of---- )  
 )  
PUBLIC UTILITIES COMMISSION )  
 )  
Instituting a Proceeding to )  
Investigate the Proposed Tariffs )  
Filed by Kauai Island Utility )  
Cooperative and Other Related )  
Matters. )  
\_\_\_\_\_ )

DOCKET NO. 2006-0498

ORDER NO. 23172

DIV. OF CONSUMER ADVOCACY  
DEPT. OF COMMERCE AND  
CONSUMER AFFAIRS  
STATE OF HAWAII

2006 DEC 29 A 8:45

RECEIVED

Filed Dec. 28, 2006  
At 12 o'clock P.M.

Karen Higashi  
Chief Clerk of the Commission

ATTEST: A True Copy  
KAREN HIGASHI  
Chief Clerk, Public Utilities  
Commission, State of Hawaii.

K. Higashi

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Docket No. 2006-0498

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ORDER

By this Order, the commission opens this investigative docket to review and address: (1) the proposed tariffs (standby service and interconnection) filed by KAUAI ISLAND UTILITY COOPERATIVE ("KIUC"); and (2) Sections 111(d)(15) and 112(b)(5) of the Public Utility Regulatory Policies Act of 1978 ("PURPA") governing interconnection standards. The commission names KIUC and the Department of Commerce and Consumer Affairs, Division of Consumer Advocacy ("Consumer Advocate"), as parties to this proceeding.

Any interested person seeking to intervene or participate in this proceeding shall file a timely motion with the commission, within ten days from the date of the public hearing,<sup>1</sup> with copies served on KIUC and the Consumer Advocate.

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<sup>1</sup>The commission intends to schedule a public hearing in this docket in early 2007. The deadline for interested persons to file timely motions to intervene or participate in this proceeding is ten days from the date of the last public hearing, consistent with Hawaii Administrative Rules ("HAR") § 6-61-57(1).

Moreover, any motion to intervene or participate shall specifically identify the issue or issues on which the person is seeking intervenor or participant status. Motions to intervene or participate shall comply with the applicable requirements of HAR §§ 6-61-55 and 6-61-56 of the commission's Rules of Practice and Procedure.

I.

Background

By Decision and Order No. 22248, filed on January 27, 2006, in Docket No. 03-0371,<sup>2</sup> the commission "set forth certain policies and principles for the deployment of distributed generation in Hawaii and certain guidelines and requirements for distributed generation, some of which will be further defined by tariff as approved by the commission."<sup>3</sup> On April 6, 2006, the commission: (1) granted in part and denied in part the motion for clarification filed by the HECO Utilities; and (2) denied the HECO Utilities' motion for partial reconsideration.<sup>4</sup>

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<sup>2</sup>The Parties in Docket No. 03-0371 are HAWAIIAN ELECTRIC COMPANY, INC., HAWAII ELECTRIC LIGHT COMPANY, INC., and MAUI ELECTRIC COMPANY, LIMITED (collectively, the "HECO Utilities"), KIUC, the Consumer Advocate, LIFE OF THE LAND, HAWAII RENEWABLE ENERGY ALLIANCE ("HREA"), HESS MICROGEN, LLC, and the COUNTY OF MAUI. The COUNTY OF KAUAI is the sole Participant.

<sup>3</sup>Decision and Order No. 22248, filed on January 27, 2006, at 1.

<sup>4</sup>Order No. 22375, filed on April 6, 2006.

A.

Proposed Tariffs

Decision and Order No. 22248 sets forth certain requirements for the electric utilities, including the requirement that the utilities file proposed interconnection and standby service tariffs for the commission's review and approval.

On July 27, 2006, KIUC filed its proposed interconnection tariff,<sup>5</sup> and on November 27, 2006, KIUC filed its proposed revisions to its standby service tariff.<sup>6</sup>

Comments on KIUC's proposed interconnection tariffs were filed by HREA and the Consumer Advocate.<sup>7</sup> In addition, the commission received unsolicited comments on KIUC's proposed standby service tariff from third-persons who are not parties or participants to this proceeding.<sup>8</sup> The non-parties, in general,

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<sup>5</sup>KIUC's proposed interconnection tariff is based on the Federal Energy Regulatory Commission's Small Generator Interconnection Agreement for Generating Facilities No Larger Than 20 MW.

<sup>6</sup>KIUC presently has a [Standby] Rider S. See Decision and Order No. 22248, at 41 - 42 n.64.

<sup>7</sup>On September 8, 2006, HREA commented on KIUC's proposed interconnection tariff. On November 9, 2006, the Consumer Advocate commented on KIUC's proposed interconnection tariff, and on November 21, 2006, KIUC responded to the Consumer Advocate's comments thereto. On December 8, 2006, the County of Kauai commented on KIUC's proposed standby service tariff.

<sup>8</sup>For example: (1) on November 24 and 27, 2006, the Pacific Region Combined Heat and Power Application Center and the Hospitality Properties Trust, respectively, commented on KIUC's then forthcoming standby service tariff; (2) on November 27, 2006, Scheibert Energy Company commented on all of the electric utilities' proposed standby service tariffs; and (3) on November 28, 2006, Marriott Hotels and Resorts commented on KIUC's proposed standby service tariff. The commission transmitted copies of these comments to the parties and participant in Docket No. 03-0371 with an opportunity to respond

request hearings on the proposed standby charges, and the opening of a new standby rates docket so that all interested stakeholders have the opportunity to participate.

B.

PURPA Interconnection Standards

On August 8, 2006, the commission, in Docket No. 03-0371, solicited comments on whether the commission should adopt, modify, or decline to adopt in whole or in part, the interconnection standards set forth in Sections 111(d)(15) and 112(b)(5) of PURPA, as amended by the Energy Policy Act of 2005,<sup>9</sup> including the extent to which the electric utilities have already met the PURPA interconnection standards. On September 8, 2006, the HECO Utilities, KIUC, and the Consumer Advocate submitted comments on the PURPA interconnection standards issue.<sup>10</sup>

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thereto. HREA submitted responses to the unsolicited comments submitted by the non-parties. Comments from other non-parties were also submitted to the commission after November 28, 2006. See, e.g., Letter from Heide and Cook, filed on November 29, 2006; Letter from the Board of Directors, Association of Apartment Owners, of the Marriott Kauai Resort and Beach Club, filed on December 4, 2006; Letter from the Board of Directors of the Marriott Kauai Beach Club Vacation Owners Association, filed on December 4, 2006; Letter from The Gas Company, filed on December 6, 2006; and Letter from the National Tropical Botanical Garden, dated December 12, 2006.

<sup>9</sup>16 U.S.C. § 2621(d)(15). See also 16 U.S.C. § 2622(b)(5).

<sup>10</sup>Section 102(a) of PURPA states:

This chapter applies to each electric utility in any calendar year, and to each proceeding relating to each electric utility in such year, if the total sales of electric energy by such utility for purposes other than resale exceeded 500 million kilowatt-hours during any calendar year beginning after December 31, 1975, and before the immediately calendar year.

## II.

### Discussion

#### A.

### Investigation

Hawaii Revised Statutes ("HRS") § 269-7 states, in relevant part:

- (a) The public utilities commission and each commissioner shall have the power to examine the condition of each public utility, the manner in which it is operated with reference to the safety or accommodation of the public, the safety, working hours, and wages of its employees, the fares and rates charged by it, the value of its physical property, the issuance by it of stocks and bonds, and the disposition of the proceeds thereof, the amount and disposition of its income, and all its financial transactions, its business relations with other persons, companies, or corporations, its compliance with all applicable state and federal laws and with the provisions of its franchise, charter, and articles of association, if any, its classifications, rules, regulations, practices, and service, and all matters of every nature affecting the relations and transactions between it and the public or persons or corporations . . .

- ...
- (c) Any investigation may be made by the commission on its own motion, and shall be made when requested by the public utility to be investigated, or by any person upon a sworn written complaint to the commission,

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KIUC confirms that its total sales of electrical energy, at this juncture, do not exceed 500 million kilowatt-hours. Nonetheless, the commission stated that it will consider whether KIUC should be required to adopt the PURPA interconnection standards.

setting forth any prima facie cause of complaint. A majority of the commission shall constitute a quorum.

HRS § 269-7(a) and (c) (emphasis added).<sup>11</sup>

Under HRS Chapter 269, the commission is vested by law with "general supervision . . . over all public utilities,"<sup>12</sup> and specifically, under HRS § 269-16, the commission is authorized to regulate the rates, fares, charges, classifications, schedules, rules and practices of a public utility and the procedures involved in its ratemaking. In short, any rate, fare, charge, classification, schedule, rule, and practice of a regulated public utility must be approved by the commission.

HRS § 269-16 states, in relevant part:

- (a) All rates, fares, charges, classifications, schedules, rules, and practices made, charged, or observed by any public utility, or by two or more public utilities jointly, shall be just and reasonable and shall be filed with the public utilities commission . . . .
- (b) No rate, fare, charge, classification, schedule, rule, or practice, other than one established pursuant to an automatic rate adjustment clause previously approved by the commission, shall be established, abandoned, modified, or departed from by any public utility, . . . .

HRS § 269-16(a) and (b) (emphasis added).

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<sup>11</sup>Commission investigatory authority is also set forth in HRS § 269-15 and HAR § 6-61-71.

<sup>12</sup>See HRS § 269-6.

Here, the commission is unable to ignore the comments raised by interested stakeholders, expressing particular concerns with KIUC's proposed standby service tariffs, including the proposed rates and charges. Accordingly, the commission opens this investigation to review and address: (1) KIUC's proposed revisions to its standby service tariff; (2) KIUC's proposed interconnection tariff; and (3) the PURPA interconnection standards issue for KIUC.<sup>13</sup> As part of its investigation, the commission, at the outset, incorporates by reference the pertinent documents and comments filed in Docket No. 03-0371, governing the matters referenced above, including KIUC's proposed tariffs.<sup>14</sup>

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<sup>13</sup>KIUC's proposed revisions to its standby service tariff are based on its cost of service study dated November 2006, attached to its transmittal, completed using KIUC's financial results for the year ended December 31, 2003.

<sup>14</sup>The United States Environmental Protection Agency ("EPA"), as part of the EPA-State Energy Efficiency and Renewable Energy Projects, of which Hawaii is one of the states selected for this program, will assist the commission in its review of the proposed tariffs.



B.

Named Parties

Since KIUC's tariffs will be impacted by the outcome of this investigation, the commission will make KIUC and the Consumer Advocate parties to this docket.<sup>15</sup>

At the present time, the commission is uncertain as to the extent of the interest and willingness to participate of others, who were parties or participants in Docket No. 03-0371 or submitted unsolicited comments in Docket No. 03-0371. Rather than naming these entities as parties to this proceeding, the commission will serve them with a copy of this Order initiating this proceeding. If these entities are interested in participating in this proceeding, they may file a motion to intervene or to participate without intervention in accordance with the requirements of HAR Chapter 6-61, Subchapter 4.

C.

Preliminary Issues

At this juncture, the commission sets forth the following preliminary issues to be addressed in this proceeding:

1. Whether KIUC's proposed revisions to its standby service tariff are just and reasonable and consistent in principle with the guidelines and requirements set forth in Decision and Order No. 22248, filed in Docket No. 03-0371, as clarified by Order No. 22375, filed in the same docket.

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<sup>15</sup>The Consumer Advocate is statutorily mandated to represent, protect, and advance the interests of all consumers of utility service and is an ex officio party to any proceeding before the commission. See HRS § 269-51; HAR § 6-61-62.

2. Whether KIUC's proposed interconnection tariff is just and reasonable and consistent in principle with the guidelines and requirements set forth in Decision and Order No. 22248, filed in Docket No. 03-0371, as clarified by Order No. 22375, filed in the same docket.

3. Whether the commission should adopt, modify, or decline to adopt in whole or in part, the PURPA interconnection standards, including the extent to which KIUC has already met the PURPA interconnection standards.

These are preliminary issues for consideration. During the development of the prehearing (or procedural) order for this proceeding, the parties (and intervenors and participants, if any) shall have the opportunity to restructure these preliminary issues, stipulate to eliminate them, or suggest other issues for resolution in this proceeding for the commission's review and consideration.

D.

#### Procedural Matters

Interested persons have the opportunity to file timely motions to intervene or participate in this proceeding.<sup>16</sup> A

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<sup>16</sup>As noted in the attached Certificate of Service, copies of this Order are being served on: (1) the parties and participant in Docket No. 03-0371; and (2) all non-parties that submitted written comments on the proposed tariffs in Docket No. 03-0371, prior to the opening of this docket. This action, as a courtesy, provides ample opportunity for interested persons to timely move to intervene or participate in this proceeding. (Because the United States Combined Heat and Power Association's ("USCHPA") Letter that comments on the HECO Utilities' proposed standby service tariff does not list its address, a copy of this Order is

motion to intervene or participate shall specifically identify the issue or issues on which the person is seeking intervenor or participant status. Motions to intervene or participate shall comply with the applicable requirements of HAR §§ 6-61-55 and 6-61-56 of the commission's Rules of Practice and Procedure.

### III.

#### Orders

##### THE COMMISSION ORDERS:

1. An investigation is instituted on the commission's own motion to review and address KIUC's proposed tariffs (standby service and interconnection) and the PURPA interconnection standards issue.

2. KIUC and the Consumer Advocate are named as parties to this proceeding.

3. Any interested person seeking to intervene or participate in this proceeding shall file a timely motion with the commission, within ten days from the date of the public hearing, with copies served on KIUC and the Consumer Advocate. Any motion to intervene or participate shall specifically identify which issue or issues the person is seeking intervenor or participant status. Motions to intervene or participate shall comply with the applicable requirements of HAR §§ 6-61-55 and 6-61-56 of the commission's Rules of Practice and Procedure.

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being mailed to the address of USCHPA's national headquarters, as listed on its website.)

DONE at Honolulu, Hawaii

DEC 28 2006

PUBLIC UTILITIES COMMISSION  
OF THE STATE OF HAWAII

By



Carlito P. Caliboso, Chairman

By



John E. Cole, Commissioner

APPROVED AS TO FORM:



Michael Azama  
Commission Counsel

kluc new dkt.oc

CERTIFICATE OF SERVICE

I hereby certify that I have this date served a copy of the foregoing Order No. 23172 upon the following persons, by causing a copy hereof to be mailed, postage prepaid, and properly addressed to each such person.

CATHERINE P. AWAKUNI  
EXECUTIVE DIRECTOR  
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS  
DIVISION OF CONSUMER ADVOCACY  
P. O. Box 541  
Honolulu, HI 96809

THOMAS W. WILLIAMS, JR., ESQ.  
PETER Y. KIKUTA, ESQ.  
GOODSILL ANDERSON QUINN & STIFEL  
Alii Place, Suite 1800  
1099 Alakea Street  
Honolulu, HI 96813

Attorneys for HECO, HELCO, MECO

WILLIAM A. BONNET  
VICE PRESIDENT  
HAWAIIAN ELECTRIC COMPANY, INC.  
HAWAII ELECTRIC LIGHT COMPANY, INC.  
MAUI ELECTRIC COMPANY, LTD.  
P. O. Box 2750  
Honolulu, HI 96840-0001

DEAN MATSUURA  
DIRECTOR, REGULATORY AFFAIRS  
HAWAIIAN ELECTRIC COMPANY, INC.  
P. O. Box 2750  
Honolulu, HI 96840-0001

KENT D. MORIHARA, ESQ.  
MORIHARA LAU & FONG LLP  
841 Bishop Street, Suite 400  
Honolulu, HI 96813

Counsel for KIUC

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RANDALL J. HEE, P.E.  
ACTING PRESIDENT AND CHIEF EXECUTIVE OFFICER  
KAUAI ISLAND UTILITY COOPERATIVE  
4463 Pahe'e Street, Suite 1  
Lihue, HI 96766

JOSEPH McCAWLEY  
TIMOTHY BLUME  
KAUAI ISLAND UTILITY COOPERATIVE  
4463 Pahe'e Street, Suite 1  
Lihue, HI 96766

BRIAN T. MOTO, ESQ.  
CORPORATION COUNSEL  
CINDY Y. YOUNG, ESQ.  
DEPUTY CORPORATION COUNSEL  
COUNTY OF MAUI  
200 S. High Street  
Wailuku, HI 96793

Counsel for the COUNTY OF MAUI

KALVIN K. KOBAYASHI  
ENERGY COORDINATOR  
COUNTY OF MAUI  
DEPARTMENT OF MANAGEMENT  
200 S. High Street  
Wailuku, HI 96793

WARREN S. BOLLMEIER II  
PRESIDENT  
HAWAII RENEWABLE ENERGY ALLIANCE  
46-040 Konane Place, #3816  
Kaneohe, HI 96744

JOHN CROUCH  
Box 38-4276  
Waikoloa, HI 96738

RICK REED  
INTER ISLAND SOLAR SUPPLY  
761 Ahua Street  
Honolulu, HI 96819

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HENRY Q CURTIS  
VICE PRESIDENT FOR CONSUMER ISSUES  
LIFE OF THE LAND  
76 North King Street, Suite 203  
Honolulu, HI 96817

SANDRA-ANN Y.H. WONG, ESQ.  
1050 Bishop Street, #514  
Honolulu, HI 96813

Counsel for HESS MICROGEN, LLC

CHRISTOPHER S. COLEMAN, ESQ.  
DEPUTY GENERAL COUNSEL  
AMERANDA HESS CORPORATION  
One Hess Plaza  
Woodbridge, NJ 07095

Counsel for HESS MICROGEN, LLC

LANI D.H. NAKAZAWA, ESQ.  
OFFICE OF THE COUNTY ATTORNEY  
COUNTY OF KAUAI  
4444 Rice Street, Suite 220  
Lihue, HI 96766

Counsel for the COUNTY OF KAUAI

GLENN SATO, ENERGY COORDINATOR  
c/o OFFICE OF THE COUNTY ATTORNEY  
4444 Rice Street, Suite 220  
Lihue, HI 96766

BRUCE HEDMAN  
CHAIRMAN  
UNITED STATES COMBINED HEAT & POWER ASSOCIATION  
USCHPA NATIONAL HEADQUARTERS  
218 D Street, SE  
Washington, D.C. 20003

Certificate of Service

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TIMOTHY E. LIPMAN, PhD  
CO-DIRECTOR  
PACIFIC REGION COMBINED HEAT  
AND POWER APPLICATION CENTER  
UNIVERSITY OF CALIFORNIA  
ENERGY AND RESOURCES GROUP  
2105 Bancroft Way, 3<sup>rd</sup> Floor, MC 3830  
Berkeley, CA 94720-3830

TODD SCHEIBERT  
SCHEIBERT ENERGY COMPANY  
TOPA Financial Center, 19<sup>th</sup> Floor  
700 Bishop Street, Suite 1906  
Honolulu, HI 96813

ED HUBENNETTE  
VICE PRESIDENT  
MARRIOTT HOTELS AND RESORTS  
JAPAN, HAWAII & PACIFIC OFFICE  
2155 Kalakaua Avenue  
Suite 710  
Honolulu, HI 96815

DEXTER S. KEKUA  
SENIOR VICE PRESIDENT  
HEIDE AND COOK, LTD.  
1714 Kanakanui Street  
Honolulu, HI 96819

JOSEPH P. ALLAN  
ASSISTANT DIRECTOR OF ENGINEERING  
HOSPITALITY PROPERTIES TRUST  
400 Centre Street  
Newton, MA 02458-2076

NEIL PETERSEN  
PRESIDENT, BOARD OF DIRECTORS  
ASSOCIATION OF APARTMENT OWNERS  
MARRIOTT KAUAI RESORT AND BEACH CLUB  
Kalapaki Beach  
3610 Rice Street  
Lihue, HI 96766



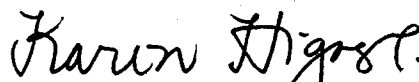
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ART GILLESPIE  
PRESIDENT, BOARD OF DIRECTORS  
MARRIOTT KAUAI BEACH CLUB  
VACATIONS OWNERS ASSOCIATION  
MARRIOTT KAUAI RESORT AND BEACH CLUB  
Kalapaki Beach  
3610 Rice Street  
Lihue, HI 96766

KEITH YOSHIDA  
VICE PRESIDENT  
SALES, MARKETING & BUSINESS DEVELOPMENT  
THE GAS COMPANY  
P. O. Box 3000  
Honolulu, HI 96802-3000

STEVE TIMPSON  
820 Mililani Street, Suite 100  
Honolulu, HI 96813

CHIPPER WICHMAN  
CHIEF EXECUTIVE OFFICER AND DIRECTOR  
NATIONAL TROPICAL BOTANICAL GARDEN  
3530 Papalina Road  
Kalaheo, HI 96741

  
\_\_\_\_\_  
Karen Higashi

DATED: DEC 28 2006